

capital to adjusted total assets of 4 percent. Higher capital ratios may be required if warranted by the particular circumstances or risk profiles of an individual Federal savings association. In all cases, Federal savings associations should hold capital commensurate with the level and nature of all risks, including the volume and severity of problem loans, to which they are exposed.

#### § 167.9 Tangible capital requirement.

(a) Federal savings associations shall have and maintain tangible capital in an amount equal to at least 1.5% of adjusted total assets.

(b) The following elements, less the amount of any deductions pursuant to paragraph (c) of this section, comprise a Federal savings association's tangible capital:

(1) Common stockholders' equity (including retained earnings);

(2) Noncumulative perpetual preferred stock and related earnings;

(3) Nonwithdrawable accounts and pledged deposits that would qualify as core capital under § 167.5 of this part; and

(4) Minority interests in the equity accounts of fully consolidated subsidiaries.

(c) *Deductions from tangible capital.* In calculating tangible capital, a Federal savings association must deduct from assets, and, thus, from capital:

(1) Intangible assets (as defined in § 167.1) except for mortgage servicing assets to the extent they are includable in tangible capital under § 167.12, and credit enhancing interest-only strips and deferred tax assets not includable in tangible capital under § 167.12.

(2) Investments, both equity and debt, in subsidiaries that are not includable subsidiaries (including those subsidiaries where the savings association has a minority ownership interest), except as provided in paragraphs (c)(3) and (c)(4) of this section.

(3) If a Federal savings association has any investments (both debt and equity) in one or more subsidiary(ies) engaged in any activity that would not fall within the scope of activities in which includable subsidiaries may engage, it must deduct such investments from assets and, thus, tangible capital

in accordance with this paragraph (c)(3). The savings association must first deduct from assets and, thus, capital the amount by which any investments in such a subsidiary(ies) exceed the amount of such investments held by the savings association. Next, the savings association must deduct from assets and, thus, tangible capital the savings association's investments in and extensions of credit to the subsidiary on the date as of which the savings association's capital is being determined.

(4) If a savings association holds a subsidiary (either directly or through a subsidiary) that is itself a domestic depository institution the OCC may, in its sole discretion upon determining that the amount of tangible capital that would be required would be higher if the assets and liabilities of such subsidiary were consolidated with those of the parent savings association than the amount that would be required if the parent savings association's investment were deducted pursuant to paragraphs (c)(2) and (c)(3) of this section, consolidate the assets and liabilities of that subsidiary with those of the parent savings association in calculating the capital adequacy of the parent savings association, regardless of whether the subsidiary would otherwise be an includable subsidiary as defined in § 167.1 of this part.

#### § 167.10 Consequences of failure to meet capital requirements.

(a) *Capital plans.* (1) [Reserved]

(2) The OCC shall require any Federal savings association not in compliance with capital standards to submit a capital plan that:

(i) Addresses the savings association's need for increased capital;

(ii) Describes the manner in which the savings association will increase capital so as to achieve compliance with capital standards;

(iii) Specifies types and levels of activities in which the savings association will engage;

(iv) Requires any increase in assets to be accompanied by increase in tangible capital not less in percentage amount than the leverage limit then applicable;